

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Bridging the Digital Divide for Low-Income Consumers)	WC Docket No. 17-287
)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	

REPLY COMMENTS OF THE NATIONAL LIFELINE ASSOCIATION

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SUMMARY

In its initial comments on the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) adopted by the Commission on November 16, 2017 in the above-referenced proceedings, NaLA argued that the Commission's proposal to impose a facilities requirement that would effectively ban resellers from the Lifeline program and digitally disenfranchise over seven million low-income households, including up to 1.3 million veterans, was a radical and misguided step that would be bad for competition, bad for consumer choice, and bad for innovation. Virtually all commenters agreed. Facilities and non-facilities based wireless carriers, facilities-based wireline carriers, state and local regulators, Tribal regulators, groups representing veterans, seniors, minorities, and children, progressive public interest and civil society groups and top conservative telecommunications policy thought leaders, all opposed the Commission's proposal to ban resellers from the Lifeline program.

In the NPRM, the Commission justifies its proposal to ban resellers from the Lifeline program in large part by arguing that the Lifeline program is primarily an infrastructure-deployment program and banning resellers would do more than the current reimbursement structure to encourage access to advanced communications service for low-income Americans. In its initial comments, NaLA offered arguments and evidence rebutting each of the Commission's points. The record overwhelmingly supports NaLA's positions.

In its initial comments, NaLA refuted the Commission's argument that resellers are mere "middle men" and that eliminating resellers from the program would "do more" to encourage access to quality affordable broadband. The commenters submitted evidence of widespread support for the positive role of resellers in the Lifeline program, including an economic analysis of models developed by Dr. John Mayo that shows how increased mobile virtual network operator (MVNO) activity increases investment in broadband networks.

While the Commission’s proposal to ban resellers from the program faces nearly unanimous opposition, a limited number of commenters express some support for the proposal. ATN International, a small regional facilities-based wireless and wireline provider, argues that diverting funds to facilities-based carriers will allow them to “reinvest in their networks,” while supporting resellers “diminish[es] the business case” for facilities-based providers. ATN provides no evidence or analysis to support its claims, which are refuted by Dr. Mayo’s Declaration. NTCH, Inc., a small regional facilities-based wireless provider with no Lifeline subscribers, re-filed its petition from 2012 seeking to reverse the Commission’s grant of forbearance to non-facilities-based providers despite the fact that both Republican-and Democratic-led Commissions have found that the competition, consumer choice and innovation that resellers bring to the Lifeline market is in the public interest and warrants forbearance. NTCH claims that it cannot compete with resellers and therefore favors heavy-handed regulation to snuff out its competitors. Smith Bagley, Inc., an early proponent of the Commission’s ill-advised reseller ban, now opposes requiring last mile facilities to serve all subscribers on Tribal lands, recognizing that if the proposal were adopted as proposed, it couldn’t meet the Commission’s requirements. Finally, Commissioner Betty Ann Kane from the District of Columbia Public Service Commission filed comments in her individual capacity supporting the reseller ban despite the consensus position of other state utility regulators reflected in the comments filed by multiple state commissions and in the bipartisan Resolution passed by the National Association of Regulatory Utility Commissioners (NARUC) opposing the reseller ban proposal.

In its initial comments, NaLA opposed several other proposals that the Commission included in the NPRM that would effectively eviscerate the Lifeline program’s ability to address

the affordability aspect of the digital divide. First, in response to questions raised in the NPRM regarding whether resellers must pass through all of the Lifeline reimbursements to their underlying carriers rather than using some for “non-eligible expenses like free phones and equipment,” NaLA explained, and TracFone and Q Link agreed, that resellers use Lifeline funds consistent with section 254(e) “only for the provision, maintenance and upgrading of facilities *and service* for which the support is intended” just like facilities-based providers. New America’s Open Technology Institute agrees that “[r]esellers typically use their Lifeline revenues by investing it back in their own services” and “[u]nder the Commission’s interpretation of the statute, a reseller simply could not exist...despite Congress allowing resale services to receive support.” There is no support in the record for a requirement that resellers pass through the entire Lifeline benefit to wholesale providers, which would have the same devastating impact on the Lifeline program as the Commission’s proposed reseller ban.

Second, in the NPRM, the Commission proposed a maximum discount level above which the cost of service would have to be paid by the Lifeline household. The vast majority of commenters joined NaLA opposing this proposal because it would needlessly complicate the Lifeline program and harm consumers – particularly the elderly, children, veterans and individuals residing on Tribal lands. The comments in support from the Missouri Public Service Commission (PSC) and Oklahoma Public Utility Division (PUD) ignore the hard financial choices that low-income consumers already must make on a daily basis and the fact that any remaining waste, fraud and abuse can be addressed by other more effective means (largely the National Verifier). The Information Technology & Innovation Foundation (ITIF) proposes a declining discount that is unnecessary and unduly complex and which would result in waste of administrative resources.

Finally, in its comments, TracFone proposes that the Commission could “establish a threshold percentage of a provider’s business consisting of service to non-Lifeline customers, such as 50%, and only allow an ETC to participate in Lifeline if this threshold is met.” The Commission should not adopt this or the similar anticompetitive and arbitrary line-drawing proposals offered by Smith Bagley because there are no valid justifications for them. Consumers benefit from more competition not less. Companies invest to compete – those that don’t need to compete don’t invest and they don’t innovate. The Lifeline program dollars are best spent when consumers can choose for themselves the services and service providers that best meet their needs.

Although the record is clear that the Commission should not impose a facilities requirement or adopt other proposals that would devastate the Lifeline program and its ability to bridge the digital divide by making essential communications affordable for low-income consumers, the commenters generally agree on several reasonable steps that the Commission should take to build upon previous and ongoing reforms that will preserve the integrity of the Lifeline program.

- The Commission should address any remaining waste, fraud and abuse by promptly implementing the National Verifier, and rely on risk-based audits and conduct-based requirements before the National Verifier is fully implemented.
- The Commission should reverse prior missteps by retaining Lifeline support for voice telephony service in both rural and urban areas and eliminating the minimum service standards (or at least allowing ETCs to meet the minimum service standards through “units” offerings).

- Based on the record in response to the NPRM regarding the proposed reseller ban, the Commission should reject the facilities requirement for the Lifeline program in general and reverse its November decision to require facilities in order to offer enhanced Lifeline support to consumers on Tribal lands.
- Even though the Commission will reverse the Lifeline Broadband Provider (LBP) process, it should seek to reduce barriers to entry and promote competition by retaining and applying the streamlined review process to ETC petitions filed at the Commission and impose reasonable shot clocks for state action on ETC petitions.
- The commenters agree that the Commission should codify the requirement for agents to register with USAC to submit information to the National Lifeline Accountability Database (NLAD) or the National Verifier, but no evidence has been offered in support of banning commission-based ETC personnel or in-person handset distribution and the main proponent of those bans (TracFone) has reversed its position.
- Although the commenters are split regarding requiring proof of eligibility for annual recertification, the Commission should only require such proof when the consumer is no longer participating in the program they used to demonstrate initial eligibility, which is what the Commission proposed in the NPRM, and would address perceptions of waste, fraud or abuse without imposing an unnecessary burden on low-income consumers.
- Although the commenters are split regarding use of Independent Economic Household (IEH) forms, the Commission should permit collection of the form only when the NLAD or state administrator has identified an address duplicate, except in situations where that information is not provided in real-time at enrollment. Further, the Commission should not require managers of multi-household residences to certify the applicant's independent

economic household status. Facility managers would likely not be authorized to make such certifications – and at the very least would likely be uncomfortable making such certifications – and the requirement would be unduly burdensome on low-income consumers most in need.

- The Lifeline program could be well served by the adoption of the bipartisan self-enforcing budget proposal advocated by NARUC to allow for rational growth (up to the current level of \$2,279,250,000). The budget should operate on an annual basis, adjust in the period following any overruns and ensure that current subscribers do not lose their benefit.

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REPLY COMMENTS OF THE NATIONAL LIFELINE ASSOCIATION

The National Lifeline Association¹ (NaLA), by and through the undersigned counsel, hereby submits reply comments to the Federal Communications Commission (FCC or Commission) in response to the proposals set forth in the Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI) adopted by the Commission on November 16, 2017 in the above-referenced proceedings.²

¹ NaLA is the only industry trade group specifically focused on the Lifeline segment of the communications marketplace. It supports eligible telecommunications carriers (ETCs), distributors, Lifeline supporters and participants and partners with regulators to improve the program through education, cooperation and advocacy. See <https://www.nalalifeline.org/>.

² See *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017) (referenced herein as the Fourth Report and Order, NPRM, or NOI in accordance with the paragraph cited). Unless otherwise noted, all references to “Comments” in these reply comments will refer to the initial comments filed in response to the NPRM on or around February 21, 2018.

I. THE RECORD REFLECTS OVERWHELMING OPPOSITION TO THE COMMISSION’S PROPOSAL TO BAN RESELLERS FROM THE LIFELINE PROGRAM BY REQUIRING FACILITIES TO RECEIVE LIFELINE SUPPORT

In its initial comments, NaLA argued that the Commission’s proposal to impose a facilities requirement that would effectively ban resellers from the Lifeline program and digitally disenfranchise over seven million low-income households, including up to 1.3 million veterans, was a radical and misguided step that would be bad for competition, bad for consumer choice, and bad for innovation. As explained below, the commenters were virtually unanimous in their opposition to the Commission’s proposal to ban resellers and provided evidence thoroughly refuting the Commission’s rationale for considering a reseller ban. The small pockets of support for the Commission’s proposal are without evidentiary basis and often grounded in anticompetitive motives.

A. Commenters Were Virtually Unanimous in Opposition to the Commission’s Proposal to Ban Resellers from the Lifeline Program

Virtually all commenters agreed with NaLA and opposed the Commission’s proposal to ban resellers from the Lifeline program. Facilities and non-facilities based wireless carriers, facilities-based wireline carriers, state and local regulators, Tribal regulators, groups representing veterans, seniors, minorities, and children, progressive public interest and civil society groups and top conservative telecommunications policy thought leaders, all opposed the Commission’s proposal to ban resellers from the Lifeline program.

Wireless carriers, including facilities-based providers, strongly oppose the Commission’s proposed reseller ban. For example, both CTIA, which represents both large and small facilities-based and non-facilities based wireless carriers, and Mobile Future,³ which represents facilities-

³ See CTIA Comments at 11; Mobile Future Comments at 3.

based mobile providers AT&T and Verizon, strongly opposed the proposal. Sprint and Verizon filed separately opposing the Commission's proposal, as did several wireless reseller Lifeline providers.⁴ Representatives of facilities-based wireline providers, which the Commission may assume would be called upon in large part to fill the void that would be created by a proposed reseller ban, also opposed it.⁵

State and local governments also opposed the proposal to ban resellers, including NARUC on behalf of all state utility regulators⁶ and all of the state public utility commissions that filed individually,⁷ as well as leading associations representing the interests of local governments⁸ and the cities of Boston, Los Angeles, Portland,⁹ and New York.¹⁰ Tribal authorities and entities, including the Oceti Sakowin Tribal Utility Authority, oppose the proposed ban.¹¹

⁴ See Sprint Comments at 17-22; Verizon Comments at 2-3, 9-10; Q Link Comments at 26-37; TracFone Comments at 6-44.

⁵ See USTelecom Comments at 2; INCOMPAS Comments at 4-7.

⁶ See NARUC Comments at 18.

⁷ See Florida PSC Comments at 2-3; Indiana URC Comments at 4; Michigan PSC Comments at 5-6; Minnesota Agencies Comments at 5; Missouri PSC Comments at 6; Nebraska PSC Comments at 6; Ohio PUC Comments at 5; Oklahoma PUD Comments at 4. See also Oregon CUB Comments at 2.

⁸ See NATOA/NLC Comments at 3.

⁹ See City of Boston et al. Comments at 13.

¹⁰ See City of New York Comments at 3; Letitia James, New York City Public Advocate, Comments at 2; Peter Koo, NYC Council Member, Comments at 2.

¹¹ See Oceti Sakowin Tribal Utility Authority Comments at 14; National Tribal Telecommunications Association (NTTA) Comments at 2-3 (opposing a complete ban on resellers and recognizing that Lifeline is primarily an affordability program). While NTTA opposes a complete ban on resellers, it requests strict limitations on Lifeline resellers, including only permitting resellers where there are no existing wireline providers and the Tribal government has approved the reseller's provision of service, and requests limiting support to the baseline \$9.25 support level. NaLA opposes these specific proposals, which would unreasonably limit competition and consumer choice on Tribal lands in a manner that would impose a de facto

Veterans groups – the Korean War Veterans Association and the National Association of American Veterans – oppose the Commission’s proposal because it would “have devastating consequences for millions of service members and veterans who rely on Lifeline service to access health care resources, find and keep jobs, participate in educational programs, and keep in touch.”¹² AARP, the preeminent representative of America’s elderly population, opposes the Commission’s proposal to ban resellers because it will disrupt service availability and reduce consumer choice and competition.¹³ Groups representing minority populations¹⁴ and consumers¹⁵ also oppose the ban.

ban on resellers by making it impossible to compete with facilities-based providers. Smith Bagley also opposes the reseller ban as proposed. *See* Smith Bagley Comments at 7-8 (“SBI opposes this [facilities-based] proposal, at least for wireless networks, and especially those operating on Tribal lands.”).

¹² *See* Korean War Veterans Association Comments at 1-2; National Association of American Veterans Comments at 1-2. In addition, section 504 of the RAY BAUM’s Act, H.R. 4986, championed by House Energy and Commerce Committee Chairman Walden and Subcommittee on Communications and Technology Chairman Blackburn, and passed by the full House of Representatives on March 6, 2018, requires the Commission to prepare a report on promoting broadband Internet access service for veterans, in particular low-income veterans. *See* H.R. 4986, 115th Cong. § 504. The unanimous opposition to the Commission’s proposal to eliminate resellers, including by groups representing veterans, strongly suggests that the proposal would make broadband services less available and affordable for low-income veterans, which is the opposite of the directive in Section 504.

¹³ *See* AARP Comments at 15.

¹⁴ *See, e.g.,* Black Women’s Roundtable Comments at 2-4; Hispanic Technology & Telecommunications Partnership Comments at 1-2; Leadership Conference on Civil and Human Rights, et al. Comments at 2; LGBT Technology Partnership and Institute Comments at 4; Low-Income Consumer Advocate Comments at 4-6; Multicultural Media, Telecom and Internet Council and the “Lifeline Supporters” (MMTC) Comments at 5-7; NAACP Comments at 2; National Digital Inclusion Alliance Comments at 3-4; National Hispanic Media Coalition Comments at 6, 8-9, 10, 17-19; National Urban League at 1-2; OCA – Asian Pacific American Advocates et al. Comments at 4.

¹⁵ *See, e.g.,* Benton Foundation Comments at 3-5, 6-8; Common Sense Kids Action Comments at 12; Consumer Action Comments at 2; Free Press Comments at 20, 26-43; Low-Income Consumer Advocates Comments at 4-6; Open Technology Institute Comments at 20-22; PA Low-Income Consumer Coalition Comments at 1-3; Rainbow PUSH Coalition Comments at 3.

Conservative groups also oppose the Commission’s proposal.¹⁶ Citizens Against Government Waste urges the Commission to “reconsider the proposal to ban non-facilities based providers until after the National Verifier system has become fully tested and operational.”¹⁷ Daniel Lyons of the conservative American Enterprise Institute also opposes a reseller ban because Lifeline is not the program to provide broadband investment and the reseller ban “is likely to undermine the program and harm the vulnerable populations that the program seeks to serve.”¹⁸

These comments demonstrate widespread opposition to the Commission’s proposal. In the next section, NaLA highlights just some of the voluminous evidence submitted into the record that undermines the assumptions underlying the Commission’s proposal to ban resellers.

B. Commenters Provided Evidence Thoroughly Refuting the Commission’s Rationale for Imposing a Reseller Ban

In the NPRM, the Commission justifies its proposal to ban resellers from the Lifeline program in large part by arguing that the Lifeline program is primarily an infrastructure-deployment program and banning resellers would do more than the current reimbursement structure to encourage access to advanced communications service for low-income Americans.¹⁹

¹⁶ See Citizens Against Government Waste Comments at 8-9; Free State Foundation Comments at 4; ITIF Comments at 3-6; *see also* Daniel Lyons, “Lifeline’s proposed reseller ban will likely harm low-income households,” AEIdeas (Mar. 5, 2018), *available at* <https://www.aei.org/publication/lifelines-proposed-reseller-ban-will-likely-harm-low-income-households/>; Jon Brodtkin, “Ajit Pai’s supporters say he’s gone too far with plan that hurts poor people,” Ars Technica (March 5, 2018), *available at* <https://arstechnica.com/tech-policy/2018/03/even-isps-hate-ajit-pais-plan-to-take-broadband-choice-away-from-poor-people/>.

¹⁷ See Citizens Against Government Waste Comments at 8-9.

¹⁸ See Daniel Lyons, “Lifeline’s proposed reseller ban will likely harm low-income households,” AEIdeas (Mar. 5, 2018), *available at* <https://www.aei.org/publication/lifelines-proposed-reseller-ban-will-likely-harm-low-income-households/>.

¹⁹ The Commission also argued that resellers are responsible for the majority of waste, fraud, and abuse in the program. As NaLA argued in response, not only are the enforcement actions

In its initial comments, NaLA offered arguments and evidence rebutting each of the Commission's points.²⁰ As explained below, the record overwhelmingly supports NaLA's positions.

1. Commenters Correctly Argue that Lifeline Is an Affordability Program, Not an Infrastructure Program

Nearly all commenters that addressed the issue agree with NaLA's position that Lifeline is not an infrastructure program and that the Commission's proposal to ban resellers would undermine the core purpose of the Lifeline program, which is affordability.²¹ CTIA submitted a declaration of economist Dr. John Mayo of Georgetown University, who explains that "the Commission's proposal to shoehorn investment-promotion into the Lifeline program is inconsistent with Lifeline's economic role as an affordability program."²² NARUC correctly notes that "shifting to only facilities-based carriers will severely undermine the *raison d'être* for the program."²³ The National Tribal Telecommunications Association agrees.²⁴ The

proportional to the overwhelming presence of resellers in the program, the Commission's selective enforcement efforts have been roundly criticized by the GAO. The more reasonable approach to addressing any remaining waste, fraud, and abuse in the program is addressed *infra* Section III.A.

²⁰ See generally NaLA Comments at 1-41.

²¹ See, e.g., CTIA Comments, Exhibit A, at 7 ¶¶ 17, 19; Mobile Future Comments at 6; USTelecom Comments at 2; Verizon Comments at 9; Florida PSC Comments at 3; NASUCA Comments at 4-5; MMTC Comments at 7.

²² See CTIA Comments, Exhibit A. at 7 ¶¶ 17, 19.

²³ See NARUC Comments at 18.

²⁴ See NTTA Comments at 3. While NTTA opposes the Commission's proposed ban on wireless resellers generally, it supports the ban for situations on Tribal lands where there are no wireline voice and broadband options. NaLA urges the Commission to reject this suggestion because it fails to respect the important role of competition and consumer choice for low-income Tribal residents.

conservative Free State Foundation similarly notes that the Lifeline program is an affordability program, not an infrastructure program.²⁵

2. Commenters, Including Facilities-Based Providers, Note the Important Role of Resellers in the Lifeline Market, Including in Promoting Infrastructure Deployment

In its initial comments, NaLA refuted the Commission’s argument that resellers are mere “middle men” and that eliminating resellers from the program would “do more” to encourage access to quality affordable broadband.²⁶ The commenters submitted evidence of widespread support for resellers in the Lifeline program, buttressing NaLA’s initial comments and undermining the Commission’s rationale for banning them. CTIA offers a robust support for resellers in the Lifeline market,²⁷ with an economic analysis of models developed by Dr. John Mayo that shows how “greater MVNO activity (as measured by MVNO subscribers) . . . increase[s] investment” in broadband networks, and the Commission’s proposal “will cause results that are precisely the opposite of those intended in the NPRM.”²⁸ Similarly, because “facilities-based providers receive revenue whenever Lifeline customers take service, including via non-facilities based providers,” the Commission’s assumption that providing subsidies solely

²⁵ See Free State Foundation Comments at 4.

²⁶ See Fourth Report and Order and NPRM ¶¶ 28, 65; NaLA Comments at 17-19. NaLA references the “middle men” comment as evidence of the Commission’s view of resellers, but does not in these reply comments address the Commission’s ban on resellers receiving Tribal support, which is the subject of a separate appeal before the D.C. Circuit. See Pet. for Review, *Nat’l Lifeline Ass’n v. FCC*, No. 18-1026, Doc. No. 1715023 (D.C. Cir. filed Jan. 25, 2018).

²⁷ See CTIA Comments at 11-21 (CTIA “strongly encourages the Commission not to adopt the proposal in the NPRM/NOI to exclude non-facilities-based providers from the Lifeline program” because MVNOs increase competition in Lifeline and lower prices for consumers; incent network investment and deployment and “drive[] investment by facilities-based providers in the rural areas” of rural states such as Kansas; and increase affordability of voice and broadband services—the primary goal of the Lifeline program.).

²⁸ See *id.*, Exhibit A., Declaration of Dr. John Mayo, 12 ¶ 27 (Mayo Decl.).

to facilities-based providers will better incent network investment “is not supported by Dr. Mayo’s analysis of the relevant data.”²⁹ Ultimately, Dr. Mayo’s analysis concludes that “MVNO subscribership is more consistently seen to have a statistically significant positive correlation to network investment.”³⁰ Mobile Future, Sprint, Verizon, USTelecom and INCOMPAS also argue that resellers play an important role in the wireless ecosystem and the Lifeline program and that eliminating resellers will not achieve the Commission’s purported goal of promoting infrastructure investment.³¹ State regulators further agree that resellers play an important role in the Lifeline market, including by contributing to infrastructure deployment.³²

3. Commenters Agree That Eliminating Resellers from the Lifeline Program Would Reduce the Availability and Affordability of Voice and Broadband Service

In its comments, NaLA argued that the proposal to ban resellers “would drastically reduce the number of Lifeline providers participating in the program and make Lifeline broadband service less available and less affordable,” forcibly removing 7.1 million existing Lifeline subscribers, including up to 1.3 million veterans,³³ from their chosen Lifeline provider, reducing or eliminating competition in the market and leaving many consumers with only wireline options and others with no options at all.³⁴ The record reflects widespread agreement

²⁹ See *id.* at 15 (citing Mayo Decl. at 12 ¶¶ 26-27).

³⁰ See *id.* at 14-15.

³¹ See Mobile Future Comments at 3-4; Sprint Comments at 15, 20-22; USTelecom Comments at 2; Verizon Comments at 2-3, 9-; INCOMPAS Comments at 6.

³² See Florida PSC Comments at 2-3; Oklahoma PUD Comments at 5.

³³ Lifeline subscribers live in rural, suburban, and urban zip codes, the majority are female, over 34 percent are over 55, over 40 percent are Caucasian (the largest demographic group), nearly 18 percent are veterans (or a member of their household is), and more than half live in a household that earned less than \$10,000 last year. See NaLA Comments at 8.

³⁴ See *id.* at 7-16.

with NaLA's position.³⁵ INCOMPAS, Sprint, and TracFone all warn of the harmful effect the proposal would have on competition in the program.³⁶ Professor Lyons similarly opposes the ban on resellers.³⁷ Similarly, eight state public utility commissions filed separately to voice opposition to the proposed facilities requirement based on the catastrophic effects it would have for competition and consumers.³⁸

C. Support for the Commission's Proposal Is Extremely Limited, Not Grounded in Facts, and Largely Driven by a Desire to Limit Competition in Particular Lifeline Markets

While the Commission's proposal to ban resellers from the program faces nearly unanimous opposition, a limited number of commenters expressed some support for the proposal, including two small regional facilities-based providers and one member of the District of Columbia Public Service Commission speaking in her individual capacity. As explained below, these supporters' self-serving and unsupported arguments should be rejected.

³⁵ See, e.g., AARP Comments at 12; America's Health Insurance Plans Comments at 3; Benton Foundation Comments at 6; Communications Workers of America Comments at 4; CTIA Comments at 13; INCOMPAS Comments at 5; ITIF Comments at 3; ITTA Comments at 2; Mobile Future Comments at 3; National Digital Inclusion Alliance Comments at 3; National Hispanic Media Coalition Comments at 10; National Urban League Comments at 2; Open Technology Institute Comments at 22; Rainbow PUSH Coalition Comments at 3.

³⁶ See INCOMPAS Comments at 4; Sprint Comments at 17; TracFone Comments at 16-23. Importantly, Sprint correctly notes that the proposal to require spectrum is unduly restrictive, since "spectrum is a finite and extremely expensive asset" and "no wireless carrier has dedicated facilities to every end user at both ends of every mobile call." See Sprint Comments 18-19.

³⁷ See Daniel Lyons, "Lifeline's proposed reseller ban will likely harm low-income households," AEIdeas (Mar. 5, 2018), available at <https://www.aei.org/publication/lifelines-proposed-reseller-ban-will-likely-harm-low-income-households/> (arguing that the proposal would limit consumer choice and "relegat[e] many to wired solutions when most Americans — including many low-income families — prefer the advantages of mobile connectivity.").

³⁸ See Florida PSC Comments at 2-3; Indiana URC Comments at 4; Michigan PSC Comments at 5-6; Minnesota Agencies Comments at 5; Missouri PSC Comments at 6; Nebraska PSC Comments at 6; Ohio PUC Comments at 5; Oregon CUB Comments at 2; NaLA Comments at 14-16.

First, ATN International, a small regional facilities-based wireless and wireline provider, filed in support of requiring facilities in order to receive Lifeline support.³⁹ ATN argues that diverting funds to facilities-based carriers will allow them to “reinvest in their networks,” while supporting resellers “diminish[es] the business case of those providers actually willing to invest in the building of networks,” since “Lifeline funds that are directed to resellers are more likely to be removed from areas that need it most, while funds directed to facilities-based providers are more likely to stay in these needy communities in the form of maintenance and new investments.”⁴⁰ ATN provides no evidence or analysis regarding the amount of Lifeline funds that it reinvests in its networks or how much of its Lifeline reimbursements stay in particular communities versus the same for resellers and their wholesale partners. On the other hand, Dr. Mayo developed investment models showing that greater MVNO activity in a market increases investments in that market, including in rural areas.⁴¹ It is clear that ATN’s motivation is to eliminate competition to the detriment of the low-income consumers in the areas it serves.

Second, NTCH, Inc., a small regional facilities-based wireless provider with no Lifeline subscribers, resurrects a petition from 2012 to reverse the Commission’s grant of forbearance to non-facilities-based providers.⁴² It levies several wild charges, including that free Lifeline-supported service is anti-competitive, that consumers will lose service as a result of program abuse, and that forbearance is not in the public interest because of foreign-owned entities in the

³⁹ See ATN International Comments at 3.

⁴⁰ See *id.*

⁴¹ See CTIA Comments, Exhibit A, 12 ¶ 27 (concluding “that greater MVNO activity (as measured by MVNO subscribers) is to increase investment.”),

⁴² See NTCH, Inc. Comments and Attachment.

program.⁴³ NTCH's arguments are meritless. First, to the extent there was real or perceived waste, fraud, and abuse in the Lifeline program prior to August 2012 when it submitted its petition, the Commission has already rooted it out through two reform proceedings, including implementation of the National Lifeline Accountability Database (NLAD) and requiring proof of eligibility, rigorous self-regulatory efforts through organizations like NaLA, and stringent compliance plans submitted by many of the largest wireless resellers in the industry and approved by the Bureau. If the petition were really about waste, fraud, and abuse, there are much less draconian means of addressing the issue than banning resellers.⁴⁴ Second, both Republican- and Democratic-led Commissions have found that the competition, consumer choice, and innovation that resellers bring to the Lifeline market is in the public interest and warrants forbearance.⁴⁵ Revealing its true aims, NTCH notes that "[n]o matter how close to the bone NTCH is able to cut its rates to the customer, it cannot offer service for free, which is what its competitors do."⁴⁶ With network-owner economics in place, NTCH's claim simply is not credible. NTCH's unwillingness to compete is no justification for leveraging the regulatory weight of the Commission to snuff out competitors through heavy-handed regulation to the detriment of consumers. The Commission should continue to ignore NTCH's meritless petition.

Third, Smith Bagley, Inc., a small regional facilities-based wireless provider and an early proponent of the Commission's ill-advised reseller ban, now opposes requiring last mile facilities to serve all subscribers on Tribal lands, recognizing that if the proposal were adopted as

⁴³ See NTCH, Inc. Comments, Attachment at i.

⁴⁴ See *infra* Section III.A.; NaLA Comments at 26-30.

⁴⁵ See NaLA Comments at 32-39.

⁴⁶ See NTCH Comments at 11.

proposed, it couldn't meet the Commission's requirements.⁴⁷ In its comments, Smith Bagley now suggests "requiring carriers to have facilities in each state where they serve, and to serve a certain number of customers, for example at least 50%, through their own last-mile facilities."⁴⁸ Smith Bagley appears to be merely looking for a proposal, any proposal, that it can meet, but its competitors can't. The Commission should reject its attempt to suppress competition through regulation.

Finally, Betty Ann Kane, a Democratic member of the D.C. Public Service Commission filing in her individual capacity, supports a prohibition on resellers because, she argues, there is "[n]o independent empirical data showing how resellers have directly contributed to the investment in broadband infrastructure upgrades or geographic expansion by the underlying facilities-based wireless service providers."⁴⁹ Commissioner Kane's proposal is undermined by the econometric data submitted in the record in response to the NPRM⁵⁰ and is outside the consensus position of other state regulators reflected in the comments filed by multiple state commissions and in the bipartisan Resolution passed by NARUC opposing the reseller ban

⁴⁷ See Smith Bagley Comments at 7-8 ("SBI opposes this [facilities-based] proposal, at least for wireless networks, and especially those operating on Tribal lands. As a wireless provider, SBI can say definitively that there are at least a few dead zones within its network where service is provided through a roaming/resale arrangement with another carrier. Consumers may live in one of these dead zones, yet use their phones throughout SBI's network. In the few cases where a consumer is served by a roaming agreement at home, the other wireless carrier oftentimes is not an [ETC], precluding a consumer from switching to another facilities-based carrier."). Smith Bagley's admission raises the question whether it could certify that it meets the facilities requirement for receiving enhanced Tribal support under paragraph 26 of the Fourth Report and Order, which requires last-mile facilities. See Fourth Report and Order ¶ 26.

⁴⁸ See Smith Bagley Comments at 8. This proposal is similar to a TracFone proposal expressing the same principle based on non-Lifeline revenues. As explained in Section II below, there is no valid reason that an ETC needs to have a certain amount of non-Lifeline revenues.

⁴⁹ See Betty Ann Kane Comments at 7.

⁵⁰ See *supra* Section I.B.

proposal.⁵¹ Indeed, her attempt to downplay the effect of the proposed ban by citing a purported merger between i-wireless and Sprint is doubly incorrect: Sprint and i-wireless never merged,⁵² and many states provided evidence that the ban would indeed result in catastrophe.⁵³ To the extent, as she claims, “[t]here is not enough money in the USF's High Cost Fund to meet the demand of rural broadband service providers,” the solution is not to contort the Lifeline program into something neither the statute nor the designers of the Lifeline program intended.⁵⁴ Finally, her proposal to require states to annually verify covered census blocks and to conduct a reverse auction to allocate support⁵⁵ is not only wildly inefficient and expensive, it is inappropriate for a program with robust competition like Lifeline.⁵⁶

Together, these limited pockets of support for the Commission’s proposed ban on Lifeline resellers hardly warrant consideration by the Commission, let alone adoption. The Commission should not make national policy on the basis of requests from small regional providers that are simply seeking to eliminate competition from the marketplace—particularly from providers that don’t offer Lifeline service. Nor should it make policy on the basis of a lone

⁵¹ NARUC issued a Resolution “urg[ing] the FCC to continue to allow non-facilities based carriers to receive Lifeline funds because they have been crucial in ensuring that low-income households are connected to vital telecommunications services.” *See* NARUC, Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households, 2 (Feb. 14, 2018).

⁵² TracFone made the same error in its comments. *See* TracFone Comments at 20-22.

⁵³ *See supra* at 7 & n.48 (citing the state PUC comments discussing areas where there would be no Lifeline service providers if resellers were eliminated).

⁵⁴ *See supra* Section I.B.1.

⁵⁵ *See* Betty Ann Kane Comments at 9.

⁵⁶ The competition in the Lifeline program sets it apart from other situations—like spectrum auctions or regulated monopoly funding for Connect America Fund (CAF) recipients. The Commission conducts spectrum auctions in situations where applications are mutually exclusive primarily due to concerns of harmful interference. The Commission is conducting reverse auctions for CAF funding to support deployment in high cost areas where there are, by definition, no competitors. Lifeline does not fit either of these models.

public service commissioner whose opinions are grounded in mistaken facts and fall outside the consensus of the entire community of state public utility commissions.

II. OTHER COMMISSION PROPOSALS THAT WOULD HAVE A DEVASTATING EFFECT ON THE LIFELINE PROGRAM SHOULD ALSO BE REJECTED

In its initial comments, NaLA opposed several other proposals that the Commission included in the NPRM that would effectively eviscerate the Lifeline program's ability to address the affordability aspect of the digital divide. In this section, we address two of those issues: a requirement that resellers pass through all Lifeline revenues to underlying carriers and the Commission's proposal to impose a maximum discount level. In addition, NaLA opposes TracFone's half-hearted proposal to require a minimum amount of non-Lifeline revenues because the proposal has no justification and it would restrict competition to the detriment of Lifeline eligible consumers.

A. The Commenters Agree that Wireless Resellers Use USF Funding for the Provision of Lifeline Services Consistent with the Communications Act and the Commission Should Not Limit Lifeline Reimbursement to the Amounts Paid to Wholesale Carriers

In response to questions raised in the NPRM regarding whether resellers pass through all of the Lifeline reimbursements to their underlying carriers rather than using some for "non-eligible expenses like free phones and equipment,"⁵⁷ NaLA explained that resellers use Lifeline funds "only for the provision, maintenance and upgrading of facilities *and service* for which the support is intended" just like facilities-based providers.⁵⁸ Lifeline discounts are applied to service offerings that meet Commission-determined minimum standards (originally set by

⁵⁷ See NPRM ¶ 72 (seeking comment on "how to determine whether existing or future resellers have fully complied with the statute's exhortation that universal service funding must be spent "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.").

⁵⁸ NaLA Comments at 56-57 (emphasis added).

compliance plans, and now by rule), and “[o]nce the discounts are applied, the revenues that ETCs receive are not universal service funds but rather revenues that can be reinvested in the business through the deployment of facilities, the enhancement of service offerings or providing devices or equipment to subscribers so that they can use the Lifeline-supported services.”⁵⁹

Q Link agrees and cites in its comments to *Sorenson v. FCC* wherein the Tenth Circuit overturned a Commission declaratory ruling that had prohibited Telecommunications Relay Service (TRS) providers from using TRS revenues for lobbying and advocacy expenditures.⁶⁰ The Court found the prohibition inconsistent with a price cap based compensation system. Likewise, Q Link notes, “the Lifeline program provides ETCs with a fixed amount of support per subscriber...so long as the provider meets the minimum service levels” and “does not reimburse ETCs for their actual costs of providing qualifying service...plus a permitted rate of return.”⁶¹

TracFone correctly analyzes section 254(e) of the Communications Act, which “plainly states that universal service funding can be used to cover the costs of providing Lifeline services” and the “suggestion that resellers must pass all Lifeline funding through to the underlying wholesale carriers would deliberately read the words ‘and services’ out of Section 254(e).”⁶² New America’s Open Technology Institute agrees, stating “[r]esellers typically use their Lifeline revenues by investing it back in their own services, including tech support, equipment support, other similar consumer-facing services, and staff and training to allow those resellers to offer Lifeline-supported services. Under the Commission’s interpretation of the

⁵⁹ *Id.* at 57.

⁶⁰ See Q Link Comments at 38-39 (citing to *Sorenson v. FCC*, 567 F.3d 1215, 1220 (10th Cir. 2009)).

⁶¹ Q Link Comments at 39.

⁶² TracFone Comments at 54-55.

statute, a reseller simply could not exist...despite Congress allowing resale services to receive support.”⁶³ Therefore, if the Commission requires Lifeline ETCs to invest all Lifeline revenues in facilities, the impact would be roughly the same as eliminating all resellers and requiring more than seven million subscribers, including upwards of 1.3 million veterans, to try to find a new Lifeline service provider where they can. As required by the Communications Act, the Commission should allow all Lifeline ETCs to use Lifeline reimbursements to support both facilities and the services provided to eligible subscribers.

B. Nearly All Commenters Addressing the Issue Oppose a Maximum Discount

In its comments, NaLA strongly opposed the Commission’s proposal to impose a maximum discount level, “above which the costs of the service must be borne by the qualifying household,” arguing among other things that it would make Lifeline services less affordable or entirely unaffordable for many consumers.⁶⁴ The vast majority of commenters opposed the Commission’s proposal to adopt a maximum discount level, which would needlessly complicate the Lifeline program and harm consumers, particularly the elderly, children, veterans and individuals residing on Tribal lands.⁶⁵

⁶³ Open Technology Institute Comments at 22 (citing TracFone Wireless Ex Parte, WC Docket No. 17-287 (Nov. 9, 2017)).

⁶⁴ See NaLA Comments at 61-69; NPRM ¶ 112.

⁶⁵ See AARP Comments at 20-21; ATN International Comments at 7; City of Boston et al. Comments at 23-26; Communications Workers of America Comments at 3-4; Consumer Action Comments at 2-3; CTIA Comments at 22-23; Florida PSC Comments at 8; Greensboro Housing Authority Comments at 2; Hispanic Technology & Telecommunications Partnership Comments at 2; INCOMPAS Comments at 8-11; ITIF Comments at 7; Low-Income Consumer Advocates Comments at 15-17; Media Alliance Comments at 1; Medicaid Health Plans of America Comments at 3; Michigan PSC Comments at 12-13; Mobile Future Comments at 6; NASUCA Comments at 27; National Digital Inclusion Alliance Comments at 4; National Grange Comments at 3; National Hispanic Media Coalition Comments at 26; National Urban League Comments at 3; OCA – Asian Pacific American Advocates et al. Comments at 3; Open Technology Institute Comments at 31; Oregon CUB Comments at 3; Q Link Comments at 42; Sprint Comments at 11-12; TracFone Comments at 62-63.

Only three commenters provided support for the Commission’s proposal.⁶⁶ ITIF was cautiously supportive, arguing that the Commission should adopt any such maximum discount “with care” and noting that “affordability can be a real barrier for low-income Americans.”⁶⁷ For that reason, ITIF suggests that any maximum should be “relatively high—near 90 percent” and then decline over time so that those who have “enjoyed a discount for years may come to appreciate the relevance and value of broadband and be willing to make a higher contribution.”⁶⁸ The Missouri PSC viewed a maximum discount as a tool to limit waste, fraud, and abuse and “produce greater accountability” and “other specific benefits.”⁶⁹ The Oklahoma PUD argues that a maximum discount level “would help to ensure that the consumer, who is best positioned to make such a determination, is a participant in determining what constitutes maximum value for the service.”⁷⁰ Oklahoma further argues that a maximum discount “would assist in directing the support to those subscribers that have the highest level of need for the service.”⁷¹

While ITIF’s acknowledgement of the plight of the nation’s low-income population and the Oklahoma PUD’s concern for consumer autonomy are admirable, these organizations’ positions with respect to the maximum discount level ignore the hard choices that low-income consumers already must make on a daily basis about their finances, and the unpredictability of income sources for these individuals. A recent study found that, among America’s poorest families, 69 percent must choose between food and utilities, 69 percent must choose between food and transportation, 66 percent must choose between food and medical care, and 57 percent

⁶⁶ See ITIF Comments at 7; Missouri PSC Comments at 11; Oklahoma PUD Comments at 15.

⁶⁷ See ITIF Comments at 7.

⁶⁸ See *id.*

⁶⁹ See Missouri PSC Comments at 11.

⁷⁰ Oklahoma PUD Comments at 15.

⁷¹ *Id.*

must choose between food and housing.⁷² The Commission should not be making extremely difficult personal and family decisions even more difficult by needlessly rationing telecommunications services among low-income Americans. Moreover, ITIF's proposal of a declining discount adds further complication to a proposal that almost all commentators and NaLA view as unnecessary and unduly complex and which would result in a waste of administrative resources. As for the Missouri PSC's comments, to the extent there is any remaining waste, fraud, and abuse in the program, it is better addressed by allowing the 2016 reforms to go into effect than imposing an additional costly, complex system that is unlikely to meaningfully address waste, fraud, and abuse in the program.

For a Commission seeking ways to streamline and reduce costs in the Lifeline program, adding a new system of dynamic, individual cost controls is likely to lead to significant costs and delay, rendering any cost-savings a wash while imposing significant and unnecessary hardship on low-income Americans.

C. The Commission Should Reject the Proposal to Establish a Minimum Threshold of Non-Lifeline Customers

In its comments, TracFone proposes that the Commission could “establish a threshold percentage of a provider’s business consisting of service to non-Lifeline customers, such as 50%, and only allow an ETC to participate in Lifeline if this threshold is met.”⁷³ The Commission should not adopt this anticompetitive proposal.

There is no valid reason that an ETC needs to have a certain amount of non-Lifeline revenues to participate in the Lifeline program and meet the communications needs of its

⁷² See Impact of Hunger, FeedingAmerica.org, *available at* <http://www.feedingamerica.org/hunger-in-america/impact-of-hunger/> (last visited Mar. 15, 2018).

⁷³ See TracFone Comments at 52-53.

subscribers. As Dr. Mayo's analysis reflects, MVNOs by their nature address niches, which could include low-income communities receiving Lifeline.⁷⁴ This is a good thing. By tailoring their services to particular niche markets, ETCs that predominantly serve low-income households can provide the best possible service tailored to the needs and resources of their low-income customers. Indeed, it is this sort of market segmentation that has enabled Lifeline-only and Lifeline-mostly ETCs to successfully drive adoption of Lifeline-supported services among American's vulnerable populations.⁷⁵

By creating an arbitrary threshold, as TracFone proposed, the Commission would only be punishing those providers that have been able to successfully tailor a sustainable business focused on closing the digital divide. In fact, TracFone itself has said it does not believe that Lifeline-only providers are engaging in regulatory arbitrage, and that the Commission has provided no evidence to that end.⁷⁶ Upon close inspection, it appears that TracFone is looking for some kind of restrictive standard that it can meet without regard to a logical or reasonable justification.

The Commission should not adopt this or the similar anticompetitive and arbitrary line-drawing proposals offered by Smith Bagley because there are no valid justifications for them. Consumers benefit from more competition not less. Companies invest to compete – those that don't need to compete don't invest and they don't innovate. The Lifeline program dollars are

⁷⁴ See CTIA Comments, Exhibit A at 4 (“MVNOs and other resellers throughout the economy have been shown to promote economic efficiency, invigorate competition, drive price reductions and satisfy the nuanced need of consumers that would otherwise go unfulfilled” and “data reveal that MVNOs enjoy their largest market presence in lower per capita income, rural states.”).

⁷⁵ See *id.* at 5-6.

⁷⁶ See TracFone Comments at 51-52.

best spent when consumers can choose for themselves the services and service providers that best meet their needs.

III. THE COMMENTERS LARGELY AGREE ON MANY COMMON-SENSE REFORMS TO THE LIFELINE PROGRAM, THE MOST IMPORTANT OF WHICH IS ALREADY UNDERWAY

Although the record is clear that the Commission should not impose a facilities requirement or adopt other proposals that would devastate the Lifeline program and its ability to bridge the digital divide by making essential communications affordable for low-income consumers, the commenters generally agree on several reasonable steps that the Commission should take to build upon previous and ongoing reforms that will preserve the integrity of the Lifeline program.

A. The Commenters Agree that the Commission Can and Should Address Any Remaining Waste, Fraud and Abuse in Lifeline by Promptly Implementing the National Verifier and Additional Conduct-Based Controls

The record is nearly unanimous in opposition to banning resellers and in favor of far more reasonable and targeted means of addressing any remaining waste, fraud or abuse in the Lifeline program. Since its proposal in 2015, the National Verifier has been widely accepted as the best way to accomplish this goal. In the initial comment round, NaLA and the vast majority of other commenters reiterated this view. For example, Verizon stated in its comments “[b]y taking decisions about eligibility out of the hands of carriers, the National Verifier will ensure that only eligible applicants obtain Lifeline service.”⁷⁷ For this reason, many commenters, including USTelecom and Citizens Against Government Waste, urged the Commission to refrain from hastily adopting other reforms to the Lifeline program (like the proposed reseller ban)

⁷⁷ Verizon Comments at 2. CTIA also observed “[g]etting the [National Verifier] deployment timeline back on track is the surest way for the Commission to advance the common goal of ensuring Lifeline program integrity.” CTIA Comments at 6.

before the National Verifier has been implemented.⁷⁸ Indeed, as Mobile Future suggested, “[t]o the extent that the Commission’s proposals to discontinue Lifeline support for non-facilities-based carriers or adopt a maximum discount level are driven primarily by concerns over waste, fraud and abuse, these concerns are better addressed through the complete and successful implementation of the National Verifier.”⁷⁹

The comments also demonstrate that there are additional reasonable Lifeline program controls that the Commission can implement – without eliminating resellers from the program – before the National Verifier is fully implemented.⁸⁰ In particular, there is widespread support and virtually no opposition to the Commission’s proposal to implement a risk-based audit approach and conduct-based requirements.⁸¹ These commenters understand that the current audit process “subjects participating providers with clean compliance histories to unnecessary audits, which divert limited USAC and Commission resources from shining a light on truly bad actors.”⁸² Moreover, the comments confirm that ETCs also must expend substantial resources to respond to audits, which almost always yield little to no evidence of compliance issues.⁸³ Thus,

⁷⁸ See Citizens Against Government Waste Comments at 9; Cox Comments at 4; OCA – Asian Pacific American Advocates et al. Comments at 4; Q Link Comments at 37; TracFone Comments at 46; USCCB Comments at 2; USTelecom Comments at 9.

⁷⁹ Mobile Future Comments at 6.

⁸⁰ For example, effective July 1, 2018, ETCs will be required to use uniform application, recertification, and Independent Economic Household forms. See *Wireline Competition Bureau Provides Guidance on Universal Forms for the Lifeline Program*, WC Docket No. 11-42, Public Notice, DA 18-161 (rel. Feb. 20, 2018).

⁸¹ See Cox Comments at 5; CTIA Comments at 7-8; Florida PSC Comments at 5; Low-Income Consumer Advocates Comments at 20; Michigan PSC Comments at 9; Missouri PSC Comments at 7; Minnesota Agencies Comments at 6-7; Oklahoma PUD Comments at 8; Smith Bagley Comments at 10; USTelecom Comments at 4-5; Verizon Comments at 6-7.

⁸² CTIA Comments at 8.

⁸³ For example, NaLA agrees with Verizon’s assessment that [t]he mandatory biennial audit requirement imposes significant and disproportionate burdens on carriers that in many instances

to the extent there is any waste, fraud or abuse to address, focusing Lifeline audit resources “based on established risk factors and taking into consideration the potential amount of harm to the Fund”⁸⁴ is a more efficient and effective way to address it than a blanket reseller ban or the current audit processes.

B. The Commission Should Maximize Consumer Choice and Flexibility in Lifeline Service Offerings By Reversing Several Prior Missteps

The initial comments make clear that this Commission has an opportunity to reverse a number of ill-advised policies implemented under Chairman Wheeler. For example, commenters agreed that the phase-down of voice support should be eliminated.⁸⁵ Indeed, the record is clear

present little risk to the program.” Verizon Comments at 6. Indeed, Verizon’s statement that it is required to expend “several hundred thousand dollars” to complete the required biennial audit is consistent with the experience of NaLA’s ETC members. *Id*; *see also* NaLA Comments at 26-27. Additionally, similar to NaLA’s finding that the improper payment rate for the 267 audits completed for its member ETCs since 2013 was less than one tenth of one percent, USTelecom reported in its comments that one of its members “has ETC affiliates that were subject to approximately 80 Lifeline PQAs in six years ... resulting in a recovery rate of .02%.” USTelecom Comments at 5. The data provided by NaLA and USTelecom members appears to be consistent with audit results across the Lifeline program – USAC data released in January 2018 shows that when comparing audits from FY2014-15 to FY2016, the average number of monetary findings went down 18 percent (from 0.97 to 0.80), the average recovery went down 89 percent (from \$5,691 to \$629) and the recovery percentage compared to the disbursement went down 97 percent (6.08 percent to 0.18 percent). *See* Universal Service Administrative Company Audit Committee Briefing Book, 41 (Jan. 29, 2018), *available at* <https://www.usac.org/about/about/leadership/materials/ac.aspx>. In contrast, in the High Cost Program, the average number of monetary findings increased by 42 percent, the average recovery increased by 120 percent and the average recovery percentage increased 193 percent. *See id.* at 40.

⁸⁴ NPRM ¶¶ 84-89.

⁸⁵ *See* AARP Comments at 15-17; California PUC Comments at 13-14; City of Boston et al. Comments at 9; City of New York Comments at 4; Florida PSC Comments at 4; GCI Comments at 2-3; Leadership Conference on Civil and Human Rights Comments at 2; Low-Income Consumer Advocates Comments at 8; Medicaid Health Plans of America Comments at 3; Michigan PSC Comments at 7; Missouri PSC Comments at 6; Minnesota Agencies Comments at 6; NAACP Comments at 2; NASUCA Comments at 20; Nebraska PSC Comments at 7; OCA – Asian Pacific American Advocates et al. Comments at 4; Oklahoma PUD Comments at 9; PA Low Income Consumer Coalition Comments at 3; TracFone Comments at 56.

that voice service remains critical for low-income consumers to remain connected, particularly during an emergency,⁸⁶ and that consumers should be allowed to choose to apply Lifeline support to voice services if that best fits their individual needs.⁸⁷ Although WTA expressly endorsed retaining voice support in rural areas, it did not argue against retaining voice support in urban areas.⁸⁸ The other commenters agree that Lifeline voice support should be retained for all subscribers, regardless of where they live.⁸⁹ Moreover, the commenters agree that although the Commission continues to have the legal authority to support Lifeline broadband service without retaining voice,⁹⁰ retaining Lifeline support for voice-only services would serve to bolster that position.⁹¹

Additionally, the record reveals strong support for eliminating the Wheeler era minimum service standards or, at least, allowing ETCs to meet the minimum service standards through

⁸⁶ See, e.g., California PUC Comments at 16; Minnesota Agencies Comments at 6.

⁸⁷ See, e.g., City of Boston et al. Comments at 9; Florida PSC Comments at 4; Leadership Conference on Civil and Human Rights Comments at 8; Michigan PSC Comments at 7; Missouri PSC Comments at 6; Nebraska PSC Comments at 7; OCA – Asian Pacific American Advocates et al. Comments at 4.

⁸⁸ See WTA Comments at 4.

⁸⁹ See, e.g., City of Boston et al. Comments at 9; Leadership Conference on Civil and Human Rights Comments at 2; MHPA Comments at 2; Michigan PSC Comments at 7; NAACP Comments at 2; Oklahoma PUD Comments at 9; PA Low Income Consumer Coalition Comments at 3; TracFone Comments at 56.

⁹⁰ See NaLA Comments at 49-56.

⁹¹ See CTIA Comments at 21 (“the Commission can and should simply retain its 2012 definition of “voice telephony service” as the Lifeline-supported service, and its 2016 rules requiring all Lifeline providers to offer broadband”); Q Link Comments at 43 (“as the FCC phases down voice-only service, it could put its statutory basis for promoting broadband at risk, in light of its recent decision to reclassify mobile broadband internet access service as an information service.”). USTelecom requests that the Commission remove the reference to broadband Internet access service from section 54.101 of the rules because that rule applies to universal service mechanisms beyond Lifeline. See USTelecom Comments at 3. NaLA agrees it can be removed as long as section 54.400(n) of the rules is unchanged and continues to define broadband as a supported service for Lifeline.

“units” offerings. Only one commenter, the Open Technology Institute, supports retaining the minimum service standards, but its core argument is not a substantive defense of them, but rather that the Commission’s proposal to impose a minimum charge for Lifeline service is not an alternative to the minimum service requirements.⁹² By contrast, the other commenters acknowledged that at the very least ETCs should have the flexibility to satisfy the minimum services standards by offering “unit” bundles that would allow the consumer to choose how to allot minutes and data in a way that best suits his or her individual needs.⁹³ Even those commenters that had reservations about the “units” option seemed primarily concerned about consumers understanding the offerings,⁹⁴ which can easily be addressed by requiring ETCs to communicate the details of such plans to consumers during the enrollment process, have clear information available on their websites and continue to address customer service inquiries promptly and accurately.

C. The Commission Should Restore the Role of Wireless Resellers in the Tribal Lifeline Program

The NPRM seeks comment on whether the Commission should apply the same definition of “facilities” for purposes of receiving Lifeline support as the definition that was adopted in the Fourth Report and Order for enhanced support on Tribal lands, or alternatively, if the Commission adopts a different definition of facilities for Lifeline generally, whether that definition should in turn be applied for enhanced Tribal support.⁹⁵ As noted in NaLA’s opening

⁹² See Open Technology Institute Comments at 31-32.

⁹³ See ATN International Comments at 4; Free State Foundation Comments at 7; Missouri PSC Comments at 7; NaLA Comments at 69-75; Q Link Comments at 43; TracFone Comments at 63-66.

⁹⁴ See AARP Comments at 18; Michigan PSC Comments at 8.

⁹⁵ See NPRM ¶ 67.

comments, the definition of facilities adopted in the Fourth Report and Order is highly restrictive, and ignores the definition of facilities already in the Commission's rules.⁹⁶ NaLA therefore respectfully submits that a better approach would be to maintain the existing facilities forbearance approach, and apply it equally for both Tribal and non-Tribal Lifeline support. As explained in section I, the comments in this proceeding overwhelmingly recognize the value of resellers in the Lifeline program. Therefore, the Commission not only should retain its blanket facilities forbearance generally in the program, but it should also reverse its December decision to require facilities in order to offer enhanced Lifeline support to consumers on Tribal lands.⁹⁷

D. The Commission Should Preserve a State Role in Designating ETCs with State and FCC ETC Designations Subject to Reasonable Shot Clocks to Promote Competition

Numerous parties commented on the proposal to eliminate the standalone LBP designation and streamlined approval process established in the 2016 Lifeline Modernization

⁹⁶ See NaLA Comments at 57-61. Indeed, Smith Bagley's admission in its comments "that there are at least a few dead zones within its network where service is provided through a roaming/resale arrangement with another carrier" suggests that it will be unable to certify that it meets the facilities-based requirement for receiving enhanced Tribal subsidies pursuant to the Fourth Report and Order, which requires last-mile facilities to receive enhanced support. Smith Bagley Comments at 7-8.

⁹⁷ NaLA respectfully submits that if the Commission does not restore the role of wireless resellers for purposes of receiving enhanced Tribal Lifeline support on Tribal lands, future reports to Congress assessing the broadband coverage on Tribal lands would likely be negatively impacted. See RAY BAUM's Act of 2018, H.R. 4986, 115th Cong. § 508 (introduced Feb. 8, 2018) (the bill that passed the House on March 6, 2018 requires the Commission to submit to the House Energy and Commerce Committee within one year a report evaluating broadband coverage in Indian country). Although there may be "coverage" in a particular area from a technical standpoint due to the existence of an underlying network, this would not be indicative of actual service provided to consumers, including low-income consumers, residing on Tribal lands. As explained in previous submissions, in many areas on Tribal lands, wireless resellers are the only means for low-income consumers to access affordable wireless voice and broadband services. See Letter from John J. Heitmann, Counsel to Assist Wireless, LLC, Boomerang, Wireless, LLC, and Easy Telephone Services Company d/b/a Easy Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 17-287 et al. (Nov. 9, 2017).

Order. Several commenters support maintaining the LBP approach because of its potential to reduce barriers to entry and promote competition in the Lifeline program.⁹⁸ Others, particularly state regulators, urge the Commission to abandon standalone LBP designations and the streamlined approval process.⁹⁹ Many opponents of the LBP framework concur with the Commission’s assessment that it should “recogniz[e] the important and Congressionally mandated role of the states in Lifeline program administration.”¹⁰⁰ However, as noted in the initial comments filed by NaLA and others, even if the Commission eliminates the standalone LBP designation and streamlined approval process, it can and should take steps to address ETC designation delays both by the Commission and in states that continue to exercise jurisdiction over such matters, and enhance competition in the Lifeline program. In particular, the Commission should retain and apply the streamlined review process to ETC petitions submitted to the Commission for the federal jurisdiction states (as well as compliance plans),¹⁰¹ and for all

⁹⁸ See, e.g., City of New York Comments at 2 (“Eliminating standalone LBP designations could favor larger service providers such as the traditional telephone operators or the four major wireless carriers, disadvantage businesses willing to serve low-income populations, and provide fewer choices for consumers.”); EveryoneOn Comments at 2 (“A nationally-determined LBP designation would enable small and future-facing entities to be eligible for the program.”); Free Press Comments (“Requiring such smaller carriers to obtain ETC status on a state-by-state basis to offer broadband-only services would raise very high (if not insurmountable) entry barriers.”); ITIF Comments at 3 (“A single, national LBP or ETC designator helps enable scale in Lifeline carriers, greatly improving efficiency.”).

⁹⁹ See, e.g., California PUC Comments at 6-8; Michigan PSC Comments at 3; Minnesota Agencies Comments at 2-3; NARUC Comments at 10-18; Nebraska PSC Comments at 2-3.

¹⁰⁰ NPRM ¶ 53.

¹⁰¹ See NaLA Comments at 101-102; see also Sprint Comments at 23 (“To the extent that a state declines to exercise this responsibility, such that applications for ETC designation are submitted to the FCC, the FCC should act promptly on such applications and any related compliance plans.”).

other states it should implement reasonable shot clocks for state review of ETC petitions.¹⁰²

E. The Record Demonstrates General Support for an Agent Registration Requirement, But Opposition to Restrictions on the Use of Commission-Based Personnel and In-Person Handset Distribution

The initial comments also provided feedback on several proposals in the NPRM aimed at improving Lifeline program integrity with respect to enrollment and eligibility verification. In general, commenters including NaLA supported the proposal to codify USAC’s current “administrative requirement that ETCs’ customer enrollment representatives register with USAC in order to be able to submit information to the NLAD or National Verifier systems.”¹⁰³ In particular, the Minnesota Agencies correctly observed that “[r]egistering those individuals processing applications, and associating them with the submission results, would allow for electronic monitoring of anomalies with particular representatives/agents and the timely resolution of any associated questions.”¹⁰⁴ However, as noted in NaLA and Q Link’s comments, an agent registration requirement would be most effective if a service provider API is built into the National Verifier so that service providers can monitor and control fraudulent enrollment attempts¹⁰⁵ and “deter bad actors from abusing the program in the first place.”¹⁰⁶

¹⁰² See NaLA Comments at 102-103. See also NASUCA Comments at 23 (“the FCC should preserve and advance the 2016 Lifeline Order’s goal of broadening the number and variety of providers of Lifeline voice and/or broadband internet access service.”).

¹⁰³ NPRM ¶ 92. See Citizens Against Government Waste Comments at 9; Low-Income Consumer Advocates Comments at 20-21; Minnesota Agencies Comments at 7-8; Missouri PSC Comments at 9; NaLA Comments at 84-87; Q Link Comments at 13; TracFone Comments at 47; USTelecom Comments at 7.

¹⁰⁴ Minnesota Agencies Comments at 8.

¹⁰⁵ See NaLA Comments at 85.

¹⁰⁶ Q Link Comments at 13.

With respect to the proposals in the NPRM related to “commission-based ETC personnel,” the initial comments offered several views. The Florida PSC, the Oklahoma PUD, and NASUCA seemingly support the proposal to prohibit the use of commission-based personnel altogether.¹⁰⁷ However, these commenters offer no evidence to support the reason for such a prohibition other than simply agreeing with the Commission’s apparent concerns about commission-based personnel, and ignore the fact that “[i]ncentives to agents, if properly structured, can provide a value to eligible populations and address the significant under enrollment of eligible households.”¹⁰⁸ Indeed, even TracFone, which has long opposed a commission-based compensation system in the Lifeline program, acknowledged in its comments that it now utilizes a commission-based structure, and that such a system can be beneficial and any risks associated with it “can be mitigated.”¹⁰⁹ Smith Bagley proposes limiting commissions only to “Lifeline providers’ employee-agents.”¹¹⁰ However, Smith Bagley admits in its comments that it “does not use third parties to sell its services,”¹¹¹ and thus its proposal appears

¹⁰⁷ See Florida PSC Comments at 5; Oklahoma PUD Comments at 11; NASUCA Comments at 24.

¹⁰⁸ Minnesota Agencies Comments at 8; *see also* NaLA Comments at 86-87 (explaining that with proper controls and oversight, agents – particularly commission-based agents – have played a critical role in helping millions of low-income Americans obtain access to essential communications services through the Lifeline program). As NaLA explained in its initial comments, it is commonplace in the industry for ETCs to limit the role of commission-based personnel solely to consumer outreach and collection of applications for Lifeline service. NaLA Comments at 86; *see also* Low-Income Consumer Advocates Comments at 21 (indicating support for “the proposal to prohibit commission-based agents from performing eligibility verifications”). Eligibility determinations are made by entirely different personnel, who are not compensated based on the number of applications processed and typically are making such determinations in a corporate office environment that is removed from enrollment events. This division of labor and physical separation helps promote integrity in the Lifeline enrollment process.

¹⁰⁹ See TracFone Comments at 47.

¹¹⁰ See Smith Bagley Comments at 10-11.

¹¹¹ See *id.* at 10.

to be little more than an anticompetitive attempt to impose, by rule, its preferred business practice to the detriment of its competitors, and should be rejected.

Some commenters also discussed the proposal to ban in-person handset distribution to eligible Lifeline subscribers. TracFone, the original proponent of such a ban, reversed course in its comments, acknowledging that it now provides “live handset activations,” and that this practice “ha[s] [its] own advantages in encouraging Lifeline’s program participation by those who are eligible.”¹¹² Smith Bagley also opposed a prohibition on in-person handset distribution on Tribal lands, noting that “a consumer signing up for service, or renewing service, must be able to receive a handset, along with proper training, at the point of sale.”¹¹³ The only commenter that supported a ban on in-person handset distribution was ITTA, which claims that such a measure would result in a “substantial gain in controls and, in turn, credibility” in the program.¹¹⁴ However, ITTA offers no evidence or further explanation to support this claim. Accordingly, in light of the opposition in the record to the proposed ban on in-person handset distribution, the Commission should not move forward with this proposal.

Finally, in addition to commenting on the proposals in the NPRM, TracFone suggests in its comments that “the Commission should further protect against program fraud by requiring holdbacks from USAC disbursements of a stated percentage each month.”¹¹⁵ This proposal

¹¹² TracFone Comments at 47.

¹¹³ Smith Bagley Comments at 13. Smith Bagley’s observation about “proper training” for handset use underscores the point NaLA made in its comments that “in-person enrollment and handset distribution provides a vital consumer education touchpoint, giving eligible Lifeline subscribers the opportunity to ask questions about how to use the device and service, understand the eligibility criteria and program rules, and make informed choices and enrollment certifications.” NaLA Comments at 99.

¹¹⁴ ITTA Comments at 4.

¹¹⁵ See TracFone Comments at 50.

should be rejected. ETCs should be permitted to seek reimbursement for all eligible consumers to whom service is being provided on the date of the snapshot. If an ETC later determines that it needs to adjust its reimbursement amount, it can simply submit a revised reimbursement request pursuant to USAC's well-established claim revisions process. Further, USAC can reduce future disbursements if it determines that a violation of Commission rules has occurred that requires an ETC to return disbursements to the fund.

F. Proof for Recertification Should Be Required Only for a Program Change

The comments generally were supportive of the proposal to prohibit subscribers from self-certifying their continued eligibility for Lifeline at recertification “if the consumer is no longer participating in the program they used to demonstrate their initial eligibility for the program.”¹¹⁶ In fact, only two commenters raised opposing concerns regarding the proposal. The Oklahoma PUD urged the Commission “to prohibit self-certification for ANY annual recertifications, not just those associated with program changes.”¹¹⁷ As NaLA explained in its initial comments, the Commission has previously considered and rejected such an approach on the basis that requiring proof of eligibility for all recertifications was “unnecessary” and unduly burdensome on consumers.¹¹⁸ The PUD offers no new evidence to support its position, and accordingly, it should be rejected. On the contrary, the Low-Income Consumer Advocates said they were “concerned that additional documentation requirements will result in consumers dropping off Lifeline.”¹¹⁹ NaLA agrees, but as noted in its initial comments, adopting the

¹¹⁶ NPRM ¶ 97. *See* Michigan PSC Comments at 10; Minnesota Agencies Comments at 8; Nebraska PSC Comments at 8.

¹¹⁷ Oklahoma PUD Comments at 11.

¹¹⁸ NaLA Comments at 90-91.

¹¹⁹ Low-Income Consumer Advocates Comments at 21.

requirement set forth in the NPRM could help diminish a perception of waste, fraud and abuse during the recertification process without being unduly burdensome to subscribers. Therefore, the Commission should adopt the compromise proposal of requiring proof of eligibility at recertification only if the subscriber is changing the basis of his or her eligibility.¹²⁰

G. The Commission Should Take a Reasonable Compromise Approach to the Collection of IEH Forms

In response to the proposal in the NPRM to permit ETCs to collect an IEH form during a Lifeline enrollment only after the NLAD or state administrator has notified the ETC “that the prospective subscriber resides at the same address as another Lifeline subscriber,”¹²¹ the commenters are split. For example, the Low-Income Consumer Advocates and the Oklahoma PUD support the proposal.¹²² By contrast, GCI and Smith Bagley oppose it, citing concerns about post-enrollment paperwork collection¹²³ and “unnecessarily complicating [consumer] efforts to establish eligibility for Lifeline support.”¹²⁴ NaLA respectfully submits that for the reasons explained in its comments, this issue requires a more nuanced compromise approach, and any changes to the IEH form process should be carefully tailored to avoid adverse effects on consumers.¹²⁵ For instance, while NaLA appreciates the Low-Income Consumer Advocates’ observation that “it makes sense to limit use of the form to times where there is actually a

¹²⁰ However, if the Commission chooses to implement a proof of eligibility requirement for recertification, the revised language in section 54.410 must make clear that such requirement applies only if a consumer is no longer participating in the program they used to demonstrate their initial eligibility for Lifeline.

¹²¹ See NPRM ¶ 98.

¹²² See Low-Income Consumer Advocates Comments at 21; Oklahoma PUD Comments at 14.

¹²³ See GCI Comments at 14-15.

¹²⁴ See Smith Bagley Comments at 11 (expressing concern about limiting IEH worksheet collection on Tribal lands).

¹²⁵ See NaLA Comments at 92-95.

duplicate address issue,”¹²⁶ that fact is not always communicated in real-time.¹²⁷ Indeed, as GCI noted, “[o]btaining paperwork from subscribers after they have already enrolled in Lifeline service can be challenging,”¹²⁸ so for those consumers whose states do not provide real-time duplicate address notifications, the better approach is to employ “prophylactic” IEH worksheet collection during each enrollment.¹²⁹

Commenters also provided feedback on the proposal to require Lifeline applicants residing in multi-person residences to obtain a certification from the facility manager to confirm the applicant’s residence and that the applicant qualifies as an independent economic household. GCI and Q Link share NaLA’s view that such a requirement would be unduly burdensome on both Lifeline applicants and facility managers, and should not be adopted.¹³⁰ TracFone, by contrast, supports the proposal, arguing that it “would help to ensure the accuracy of a

¹²⁶ Low-Income Consumer Advocates Comments at 21.

¹²⁷ See NaLA Comments at 93-94. In states such as Texas, where duplicate address checks are completed for wireline enrollments on a monthly basis, ETCs should be permitted to collect IEH forms during all enrollments so that they can be provided to the administrator upon request.

¹²⁸ GCI Comments at 15.

¹²⁹ See NaLA Comments at 93-94 (explaining the process in Texas, an NLAD opt-out state, where the existence of duplicate addresses is not always communicated in real-time at enrollment.).

¹³⁰ See GCI Comments at 15 (“First, this proposal is overbroad in that it subjects applicants to an additional obligation even when another Lifeline subscriber does not reside at the same address. Second, it would impose a new and, in some cases, administratively challenging burden on multiple-household facilities. The facility manager may not know whether other Lifeline subscribers reside at the facility or whether the applicant is part of the same economic household as an existing Lifeline subscriber. To enable an applicant to comply with this request, then, facilities would need to seek this information from all residents and update it on a regular basis. That may be difficult or impossible—residents may come and go, thwarting efforts to maintain an accurate list.”); Q Link Comments at 17 (“The Commission’s proposal would unnecessarily burden the often vulnerable consumers who reside in these venues, as well as over-worked managers who may not have direct insight into the relationships among all those who live in the venue.”).

subscriber's IEH Worksheet.”¹³¹ However, facility managers would likely not be authorized to make such certifications – and at the very least would likely be uncomfortable making such certifications. Moreover, they are not necessarily trained on the Lifeline program or the eligibility requirements, and may be unable or unwilling to certify (particularly if the certification must be made under penalty of perjury) that the Lifeline applicant satisfies the criteria set forth in the Commission's definition of an independent “household,” which requires a factual determination as to whether all persons at a particular address are “one economic unit.” Because this proposal is likely to unjustifiably restrict eligible low-income consumers most in need from enrolling in the Lifeline program, it should be rejected.

H. The Lifeline Program Could Be Well Served by the Adoption of the Bipartisan NARUC Proposal for a Self-Enforcing Budget for the Lifeline Program at Approximately \$2.25 Billion

The vast majority of commenters oppose the proposal in the NPRM to adopt a self-enforcing budget mechanism for the Lifeline program, citing concerns such as the potentially destabilizing effect of a six-month budget cycle and the detrimental impact to consumers of imposing such harsh limitations on Lifeline support.¹³² Citizens Against Government Waste, one

¹³¹ See TracFone Comments at 49-50.

¹³² See AARP Comments at 22; America's Health Insurance Plans Comments at 3-4; Black Women's Roundtable Comments at 4-5; City of Boston et al. Comments at 20-21; City of New York Comments at 6; Common Sense Kids Action Comments at 9-10; Communications Workers of America Comments at 3; Consumer Action Comments at 2; Cox Comments at 9-10; CTIA Comments at 21-22; Free State Foundation Comments at 5-6; Hispanic Technology & Telecommunications Partnership Comments at 2; Leadership Conference on Civil and Human Rights Comments at 2; LGBT Technology Partnership & Institute Comments at 3; Low-Income Consumer Advocates Comments at 13; Michigan PSC Comments at 11-12; Missouri PSC Comments at 10; MMTC Comments at 15; NAACP Comments at 2; NARUC Comments at 27-28; National Association of American Veterans Comments at 2; National Hispanic Media Coalition Comments at 23-24; National Housing Conference Comments at 2; National Urban League Comments at 3; OCA – Asian Pacific American Advocates et al. Comments at 3; Open Technology Institute Comments at 29; Oregon CUB Comments at 3; PA Low Income Consumer

of the few proponents of the proposal, asserts that it is “is a fiscally responsible approach to managing costs and an appropriate method for the commission to restrain the growth of a program whose budget has exponentially increased over many years.”¹³³ However, this statement ignores two key facts about the Lifeline program. First, available data suggests that only approximately one-third of eligible households participate in Lifeline.¹³⁴ If the Commission truly wants to close the digital divide for low-income Americans, it should adopt a budget mechanism that will allow for rational growth in participation, not seek to “restrain” it. Second, Citizens Against Government Waste’s claim that the Lifeline program budget “has exponentially increased over many years” ignores the clear and continuous downward trend in Lifeline disbursements since 2012.¹³⁵ The comments that support prioritization of Lifeline support based on geographic criteria are similarly misguided.¹³⁶ Indeed, as Sprint observed, “[a] consumer who lacks affordable access to voice or broadband service has as great a need for such access if he resides in a rural Tribal area as if he resides in the middle of a large city. Where the individual need is equal, prioritization of the Lifeline benefit on the basis of geography arguably is arbitrary.”¹³⁷ Accordingly, NaLA respectfully submits that to the extent the Commission makes

Coalition Comments at 4-5; Q Link Comments at 19-24; Rainbow PUSH Coalition Comments at 2; TracFone Comments at 58-60; USTelecom Comments at 8-9; Verizon Comments at 10-11.

¹³³ Citizens Against Government Waste Comments at 10.

¹³⁴ See NaLA Comments at 80; NARUC Comments at 30 (App’x A).

¹³⁵ See NaLA Comments at 79.

¹³⁶ See ATN International Comments at 8; NTTA Comments at 7-8; Smith Bagley Comments at 15.

¹³⁷ Sprint Comments at 5; *see also* INCOMPAS Comments at 14 (the NPRM fails to explain why Lifeline funding would need to be prioritized in the event that the cap is reached); Michigan PSC Comments at 12 (“The MPSC is concerned about prioritization of Lifeline spending if the Lifeline budget cap is reached. In the proposed prioritization hierarchy when the cap is reached, there may be Lifeline customers unable to obtain assistance because they have lower priority than other Lifeline customers.”); NASUCA Comments at 26 (“The FCC should not set a budget

any changes to the Lifeline budget mechanism, it should “carefully balance: (1) ensuring that qualified households that are current subscribers do not lose their eligible Lifeline benefit; and (2) that there is reasonable and rational growth in the Lifeline fund to serve subscribers in an amount that does not exceed the current soft budget notification amount.”¹³⁸ Adopting the NARUC bipartisan consensus proposal would achieve these goals.

CONCLUSION

The Commission should further reform the Lifeline program consistent with the positions herein and in NaLA’s initial comments, but reject proposals like the elimination of wireless resellers that the record overwhelmingly shows would drastically cut the Lifeline program and widen the digital divide.

Respectfully submitted,



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level process and budget level that would require the curtailment of Lifeline service broadly or eliminate the availability of Lifeline service in certain geographic areas such as cities.”).

¹³⁸ NARUC Comments at 30 (App’x A); *see also* NaLA Comments at 79-84.